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# **The legal and administrative processes in adoption: Views and experiences of newly formed adoptive families**

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## **Key words**

Adoption; placement; courts; legal process; local authorities; post-adoption contact; identity; permanence.

## **Abstract**

The early stages of adoptive placements are important in achieving successful long-term outcomes for adopted children and their families. This paper reports on findings from the Wales Adoption Study, in which adoptive parents shared their views and experiences of the legal and administrative processes in obtaining an adoption order. Parents described a range of difficulties that added to anxieties and delays. These arose mainly through poor communication about the steps in the legal process and avoidable administrative errors or oversights. Some parents also experienced lack of information and support regarding agreed contact arrangements and work with their child to help them make sense of their adoptive status.

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## **Introduction**

In England and Wales, most adoptions are of children in state care because of abuse or neglect, or when removed at birth because of unresolved concerns about the risk of significant harm. Very few children are voluntarily relinquished by their birth parents. Government statistics indicate this at ten percent (Fenton-Glynn, 2016).

The legal process of adoption begins with two separate processes: one relating to the child and one to the adopters. The sequence of events for the adopters in a typical case starts with their approval as adoptive parents. This may be achieved through a local authority (LA) adoption agency or a voluntary adoption agency, which will assign a specific social worker to support and assess them (Welsh Government 2006). Separately, before a

child is placed for adoption, both the LA and the court will have completed decision-making processes, concluding that adoption is the best plan for the child and culminating in a placement order under s 21 Adoption and Children Act 2002. A placement order gives the local authority the authorisation to place a child with adopters - in other words, for the child to move into an adoptive placement. During the care proceedings that led to the placement order being made, a range of other long-term options will have been considered, including possible safe return to a parent/s; placement with a member of the extended family and long term foster care. These decisions are made in accordance with the principle of the paramountcy of the child's welfare (s 1).

The purpose of a placement order is to separate the initial process of deciding on adoption as the best outcome for a particular child, from the subsequent stage of placing the child with identified prospective adopters. The intention is to minimise the adopters' involvement in any contest by the birth family. Legal issues relating to birth parent consent are expected to have been resolved before adopters get involved, thus securing the agency's position in being able to place the child.

The linking and matching process between a child and their prospective adoptive parent/s is undertaken by the agencies. Government guidance indicates that this may take between three and six months (Welsh Government, 2006). Once linked to a child, adopters will meet the child's social worker from the placing authority. Information about the child will be shared and a decision will be made about the suitability of the match. If positive, a social work report will be submitted to the local authority matching panel. The panel will decide whether or not to endorse the match. Official ratification by the agency decision maker is needed before proceeding with the adoptive placement. Successfully matched children and adopters will undergo a series of introductions, typically lasting about two weeks (Selwyn et al, 2015), after which time, the child will move from foster care to their adoptive placement.

Once a child is in placement, adopters need to make an application to court for an adoption order, but do not normally have legal representation because they will not be financially eligible for legal aid provision (Legal Aid Sentencing and Punishment of Offenders Act 2013, schedule 1). The assumption from the 2002 legislation is that any disputed issues were settled at the earlier stage of the placement order. If the adoption application is actively opposed, it is good practice for a local authority to offer some legal advice through their own lawyer, but this is necessarily limited. Adopters cannot apply for an adoption order until the child has lived with them for at least ten weeks (s 42(2) Adoption and Children Act 2002). During the period between placement and adoption, parental responsibility is still shared and the child remains looked after by the local authority. Adoptive parents are reliant on their own, and the child's, social workers to guide them through court applications and hearings.

When a child has been placed for adoption, a birth parent will not be able to oppose the adoption order being made without first obtaining the leave of the court and meeting a high threshold of evidence (Doughty, 2015 a). However, following publication of the Court of Appeal judgment in *Re B-S* in September 2013, this test has arguably been fixed at a lower level since the legislation was originally interpreted by the courts ten years ago (Masson, 2014). This judgment, and others associated with it, effectively led to a dramatic increase in the number of appeals by birth parents in adoption applications going through the courts (Doughty, 2015 b). Anecdotal evidence suggests that this development has caused delays, uncertainties and anxieties for some adopters and practitioners across England and Wales. This has been reflected by a drop in local authority adoption plans for children, believed to stem from a sudden lack of confidence that the courts would agree that adoption was the right order. At the same time, there has been a substantial increase in the rate of special guardianship orders being made to members of the extended birth family (DfE, 2015). Generally, legal and social work practitioners believe

that birth parents have become more likely to succeed in objecting to the child being adopted outside the family since *Re B-S* (Bainham and Markham, 2014; Gupta and Lloyd Jones, 2014).

Newly formed adoptive families contend with life changing circumstances, through which a range of early support needs may emerge. These can include help to: assist children in making better sense of their lives (life story work); promote children's physical and psychological wellbeing; strengthen relationships between the new family members; negotiate and implement contact with the birth family; and adjust to financial implications associated with the placement (Meakings et al. forthcoming). It is therefore important to minimise additional obstacles in the early days of adoptive family life. While still having due regard to the legal interests of all parties, the aim at this stage must therefore be to avoid any unnecessary complications with the law and related court processes in respect of the application to secure the adoption order.

Drawing on findings from the Wales Adoption Study, this article sheds new light on adoptive parents' experiences of the legal process, including their interaction with the local authorities and with the courts, in pursuit of legalising the adoption.

### **Wales Adoption Study**

This national study used a mixed-methods approach to examine the characteristics and experiences of children recently placed for adoption in Wales, to consider the early support needs of adoptive families into which a sample of these children were placed, and to better understand what helps these families to flourish. The study also considered the impact that decision making by local authorities and the courts had on the families in early placement. It did not engage directly with children, most of who were young, but investigated the perceptions of the adopters to analyse the factors that characterise and underpin early placement success.

## Methods

Data collection comprised three strands:

1] Review of Child Assessment Report for Adoption (CARA) records: The records of all children placed for adoption by every local authority in Wales between 01 July 2014 and 31 July 2015 were reviewed (n=374). The CARAs, completed by social workers, report on children's experiences and needs within the domains of health, education, emotional and behavioural development, self-care skills, identity, family and social presentation. They also provide a record of the characteristics and experiences of the children's birth parents, the given reasons children were placed for adoption and the actions taken by the LA. Under the Adoption Agencies (Wales) Regulations 2005, adoptive parents should be provided with the CARA when matched with a child, so that they have detailed information about the child and their pre-adoption experiences.

2] Questionnaires to adoptive parents: Adoptive parents completed two questionnaires – the first at 4 months post placement (n=96) and the second, 12 months thereafter (n=72). The families completing the questionnaires were drawn from those with whom a child from the CARA sample had been placed. The questionnaires gathered information on the demographic and background characteristics of the adoptive families, alongside their support needs and experiences. Parents were asked how the adoptive placement was faring - what they thought was going well in adoptive family life, as well as any concerns they had in caring for their children. The second questionnaire specifically sought detail about parents' experiences of the legal process and court procedure in relation to their obtaining the adoption order.

3] In depth interviews with adoptive parents: The interview sample was drawn from families who had completed the first questionnaire and who had agreed to be contacted for interview (n=40). The interviews typically took place nine months after the start of the adoptive placement. Parents were interviewed at home with visits lasting between 2-3 hours. The

interviews were designed to develop a fuller understanding of the early experiences and support needs of adoptive families.

This paper draws largely on the material generated from the interview work and the data derived from the second questionnaire. At these points in time, many adoptive parents were able to reflect on their experiences of the legal and administrative process and the court system during their transition to becoming legal parents. Those adopters who had not yet secured the adoption order also shared their views and experiences.

### Sample characteristics

The characteristics of the 374 children placed for adoption by the local authorities in Wales between 01 July 2014 – 31 July 2015 are reported in detail elsewhere (Anthony et al., 2016). All children were aged between birth and 6½ years on entry into care. Their average age on entering care (final entry if removed more than once) was one year and two months. Just over two fifths (41%) of the children became looked after at, or shortly following their birth, whilst 6% did so after the age of four. A third of all children were placed for adoption as part of a sibling group. The following table set out the key characteristics of the families in the questionnaire and interview samples.

**Table 1: Key characteristics of the families in the questionnaire and interview samples**

	<b>Questionnaire one sample (n=96)</b>		<b>Questionnaire two sample (n=72)</b>		<b>Interview sample (n=40)</b>	
	<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>
<b>Adopter status</b>						
Heterosexual couple	79	83	57	79	31	78
Same sex couple	5	5	4	6	3	7
Single adopter	12	12	11	15	6	15
<b>Child gender</b>						
Male	49	51	36	50	23	57
Female	47	49	36	50	17	43



**Age when placed  
for adoption**

Under 12 months	23	24	16	22	9	22.5
12-47 months	43	45	33	46	18	45
48 months+	30	31	23	32	13	32.5

**Sibling placement**

No	67	70	50	69	30	75
Yes	27	30	22	31	10	25

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The first questionnaire included the Strengths and Difficulties Questionnaire (SDQ; Goodman, 1997). Our findings show that four months after joining their adoptive family, both younger and older children had significantly higher total scores; higher scores on a number of individual subscales; and lower prosocial behaviour scores, than children from the UK general population. The results highlight the importance of planning post-adoption support that considers and promotes child mental health.

**Adoptive parents' experiences of applying to court**

At interview, typically occurring nine months after the child had been placed for adoption, 28 of the 40 families (70%) reported having secured the adoption order. By the time the second questionnaire was returned (16 months post placement) 64 of the 72 families (89%) had legalised the adoption, whilst a further 3 families (4%) had their adoption order pending. We knew of two placements that had disrupted – one before the adoption order had been granted and one afterwards.

No family reported very severe setbacks in obtaining the adoption order because of parental opposition or appeals to the higher courts, although some experienced difficulties because of contested applications, as described below. However, a range of factors had affected the ease with which parents had navigated the legal process. These matters, discussed next, included delays and adjournments.



### Delays in making the application to the court

Once the child was placed with them, most adopters wanted to proceed quickly with securing the adoption order. However, the questionnaire findings showed that of the 64 post-order families, as many as two fifths (39%, n=25) reported experiencing administrative or procedural delays, even before the application for the adoption order had been submitted to the court. Many of these parents reported feeling frustrated by poor social work practice, characterised by under-resourcing. There were accounts of social workers not having had time to file the application, others had seemingly forgotten to do so, or had lost the paperwork. Occasionally, adopters went as far as to describe social workers as incompetent or completely uninterested:

*I had to submit a part filled form to the LA for them to complete. It took them over 2 months to put in birth parents' addresses and send it to the court with my cheque.*

*Our daughter's social worker was completely inept - lost documents and added about five months onto the process through this and her delays in setting appointments.*

*The social worker was only working two days a week. She was taking leave and she couldn't get the paper work done in time before she went on leave. That was kind of the attitude that we've had all along.*

In one instance, an application was delayed after the relationship between the adopters and the LA had broken down. According to the adopters, the LA would not provide guidance on the timeline for the legal process and refused to support them in applying for the order. After taking advice from an adoption charity, they lodged the application directly to the court. As one of the parents explained:

*Obviously the courts have got wise to the fact that in fairness everybody doesn't always get on, so what you can do is, you can send the application off to the judge's clerk and the judge's clerk files it and does all the bits and pieces with it, takes your cheque for £170 ... then she sends the package off to social services to say 'you need to complete these bits.' Our darling social worker had put everything back in an envelope and said 'we're not*

*supporting the application' and sent it straight back to the judge. At which point there was a lot of furore ... 'Actually it's not your decision to make, I'm the judge, fill the form in'.*

### Delays in court hearings

Nearly two fifths of families (38%, n=23) reported experiencing a delay once the application had been submitted to court. There were instances of the wrong court being booked and of the court being double booked. One family described how the location and the date for their first hearing were changed three times. For others, the delay was attributed to the lack of availability of a judge. These explanations probably reflect crowded court lists with high judicial workloads. Adopters said:

*Court was like two months later [than the application] ... on the court date my social worker rang me saying something like they've booked her into the wrong court and it needs to be in a family court and the judge isn't high enough to approve adoption, something really silly like that. So then we had to wait for the court after, and her birth parents were asked to go, but apparently they had moved and hadn't had the information.*

*Down here the family judge sits once a month, so if you miss his slot, then he doesn't get round to looking at your paperwork, you go onto the next month, then you go onto the next month, and eventually I think it was end of June that they actually came to looking at the paperwork ... three months hence.*

Administrative problems in monitoring the status (and occasionally whereabouts) of applications also caused delay, such as for the family who waited six or seven months for their application to be heard. Court staff had apparently 'lost track' of where their fee and paperwork was in the system. The adopters were told that the problems with court processes had been caused by understaffing.

Incomplete paperwork submitted by the LA led to some hearings being adjourned. These omissions were not always noticed by the court before the hearing. For example, parents said:

*Appalling delays due to the LA not submitting paperwork. A court order was made to obtain this. Then on the actual court date, the child social worker failed to attend and it was discovered that the documents were still not filed - a further two week postponement.*

Ten families (17% of all those post-order) reported that their applications had been delayed because the local authority had failed to serve (or had failed to follow the correct procedure for serving) the papers on birth parents, as required by the court. One mother said:

*I attended the final hearing where it was found that birth parents had not been informed. A rescheduled hearing was held two weeks later and I did not attend because birth mother attended.*

Not only was this described by parents as an inconvenience, for some it was also emotionally exhausting. Lack of acknowledgement by the LA about the impact of the delay on parents could exacerbate their distress:

*The judge came in, and said, "Thanks ... for coming here, thank you for taking the time to come here. I know that you think you've come here getting your adoption order, unfortunately ... [LA] have made no provision to actually formally contact or correctly contact birth mother" ... they hadn't done their job properly basically. It was incompetence, it wasn't an oversight, it was incompetence. To compound that, nobody contacted us afterwards to see if we were okay, nobody said 'sorry', nobody said what the action plan was. We were just left ... But can you imagine, it was a devastating thing at the time. I was furious and I was exhausted. That was the most emotional part of the process.*

In another case, the judge had insisted on evidence that the application had been served on the birth mother in accordance with the court rules (Family Procedure Rules 2014 r 6.4). It had been the local authority's practice to just put the papers through what they believed was the parents' letterbox, which does not comply with the rules. This incident added a four-week delay to the proceedings. It would be surprising if this local authority had customarily failed to comply with court rules on service, because such an omission would be a valid ground for later objections. On the other hand,

this might suggest that some judges are more rigorous than others in checking this.

The legislation states that both the court and the adoption agency must bear in mind that delay is likely to prejudice the child's welfare (section 1(3) Adoption and Children Act 2002) but current court and local authority and court workloads do inevitably create delays. It was, however, surprising to find this incidence of non-compliance with the basic court rules, especially in the context of the gravity of the proceedings, the birth parents' rights to fair trial, and the paramount consideration of the child's welfare throughout his life (section 1(2)).

### Contested applications

A third (n=21, 33%) of the post-order families reported that their application had been contested by birth parents. Others had expected this to happen, but in the event, opposition fell away.. Where applications were contested, some adopters who had been aware of this likelihood beforehand, did not feel ambushed:

*I expected it to be honest. Obviously it was a blow, but it was one I was expecting. I think from what I'd heard from the social workers, how his parents had been, all through the process, it wasn't at all unexpected.*

*I wasn't worried, I was more frustrated, because everyone knew what the outcome was going to be.*

However, for others, contested applications were extremely stressful and upsetting, particularly when uncertainty surrounded the case, or when an appeal was unforeseen:

*We had just come back from swimming and I opened up the mail and I see it's from [name] Court and I get excited about it ... I opened it and here was [birth mother's] handwriting and her statement and it was just a complete shock to the system. I was like, where the hell has that come from? I was in tears and I'm trying to make him lunch before he went to the nursery.*

*The whole process ... has an enormous effect on your life. It is fraught with anxiety and uncertainty as to whether birth family will be present and will challenge.*

Publicity in the mainstream press about recent difficulties faced by adopters (for example, Bingham, 2014; Butler, 2015), and what may have been heard on the grapevine, increased the anxiety levels for some, as too did an awareness of the *Re B-S* effect.

One adoptive couple, whose application was being contested, recognised that the judge 'wanted it watertight' but they had feared at one point that the child would be removed from his placement with them. They found the local authority unhelpful.

*"But she won't get legal aid, oh she has got legal aid" ... and then to add to it the social workers didn't do their end of the bargain, didn't provide the judge what she required and so she delayed it again, so it's been delay, delay, and obviously the mother thinks that she's having a shot at contesting the order, it was really hard for us, and I wasn't reassured until I went on the internet and read loads and loads about what's going on currently with all the legal situation between the judiciary and the politicians and all the rest of it, it's an absolute nightmare, so we're stuck in the middle of a test case.*

A number of study participants, conscious of a sea-change in the law, had formed an impression that adoption had become more difficult. One adoptive mother, who previously had been the child's foster carer, explained:

*They did assess a couple of family members for [child] to go and live back with them, but they weren't appropriate ... I felt sick, it was awful because I thought they're just putting her there to fail. I thought she's not going to thrive ... It was quite hard when they were going 'we'll assess auntie' and I was like 'No' and luckily, they did see that it was inappropriate, so I was quite pleased then, relieved ... because a lot of children are going home now aren't they? They are giving [birth family] the benefit of the doubt.*

Adopters also recognised the impact that contesting the adoption had on other involved parties. Some were worried about the effects on birth parents, who they thought had unfairly been given 'false hope' by being

allowed to appeal. The children themselves were not immune to anxiety triggered by the uncertainty associated with appeals. One adopter, whose son had overheard social workers talking about the legal challenge to the adoption, said:

*With the increase in appeals and leave to appeal, it is vital that LA support adoptive parents and children. Having to tell my son that he was staying for ever, when I was not at all sure what would happen next week is not something anyone should have to do without support. I did not receive adequate basic information from his LA about the process.*

### Adopter-led postponement

At 16 months post placement, 8 of the 72 families had not yet secured the adoption order. In all of these instances, the adopters themselves had delayed filing the application. The reason always related to parents' concerns about the withdrawal of support services once the adoption order had been secured. One mother, who was insisting on the LA's commitment to continuing therapeutic support for her child post order, explained:

*So I said, if [psychologist's support] is going to be withdrawn, I'm sorry, but I don't know if I can carry on. I knew I was going to carry on, but I needed to use some ammunition from somewhere because it was the only thing I'd asked for. So I said hang on then, you need to hold up with our adoption as I need to know from somewhere why I'm not going to be allowed to get that support.*

Another adoptive couple (of two siblings) felt under pressure from the social worker being 'pushy', to complete the court application some 12 weeks after placement, because they were 'still not ready'. They were also reliant on the local authority for psychological support for the children which they feared would stop post-order. The parent doing most of the caring had become desperate enough to request a weekend respite/short break some months earlier but this had been refused and she was struggling, not having had a break from caring for two traumatised children for 18 months, an unusually long period after placement with no order.

## Experiences of the court process

Few people enjoy the prospect of going to court, but adoptive applicants are aware that this will eventually be required. It was not, however, encounters with the judiciary that most often proved to be a difficult experience for families, but the poor (and sometimes conflicting) information shared, or not shared, during proceedings. Parents described a variety of problems they had encountered as a direct result of poor communication at different stages of the court process, which were a source of stress and frustration. Four adopters specifically mentioned their difficulty in ascertaining whether or not the adoption order had been granted. Two mothers said:

*No one told us the result of the final hearing, the local authority didn't report it to us, and we got a text message from our social worker to say I hear congratulations are in order, and so that's the first we knew of it, and she was horrified. But why she didn't phone us on that day I don't know.*

*Finding out if the final order granted took nearly a week. This could have been sorted. No one knew the outcome.*

Another family reported problems in locating, then accessing the venue for their celebration hearing:

*We were told there is a celebration hearing and I mean we struggled to find [venue]. We couldn't find where it was going to be, we found the building but we couldn't find the room because they couldn't find us on their list, because they asked my name and I said my name and I should have said his old name, and it got all quite confusing.*

Another adopter related how she had been advised to apply to a local court and received two weeks' notice of the hearing. The next day she received a second letter saying the matter would be heard at a different court on the same date, but at a different time. On telephoning the court to check, she was given yet a third venue. It was only the day before she went to court that she knew that both the final hearing and celebration hearing had been



scheduled for the same day. Another adopter, in summarising her court experience said:

*It was stressful and lengthy and no one seemed to keep us updated about what was happening, when and why. To be fair, the court adoption officers were brilliant whenever we contacted them.*

A few parents expressed concerns about not yet having had key documents safely returned to them. While this had not held up proceedings, it had added to parents' stress:

*I was more worried about our marriage certificate than anything ... I don't know where you go to get another marriage certificate and you need it for banking, you need it if you buy a house, it's one of those documents isn't it? And I thought I need it back, where is it? And [child]'s original birth certificate, I'm like, where has that gone? That was in the system.*

The suggestion for a step-by-step guide about the court process to be available, particularly in relation to the timing and sequence of events, was repeated by several adopters. For example:

*The only thing I would say is maybe have just a clearer kind of picture of the legal bits after [child] comes to you ... I don't think in our mind we had like the staging posts, you know. We put in for the adoption order after 12 weeks, as soon as you can do it I think, and we did that and then it kind of went into a bit of an abyss then and we didn't quite know when there would be the initial hearing and then the second hearing and then the formal ceremony bit ... it would have been nice to have some map of that and get some clarity in our own minds.*

*I found the legal side quite confusing and it would have been helpful to have a kind of step-by-step guide about what's happening next because I just kind of thought well I'm sure something will happen next, what do we do now?*

*And the jargon in those letters is 'ugh'... Ok, send them the legal jargon, but maybe a quick A4 bit of paper saying that bit means that, that bit means that and that bit means that.*

Although most adopters were very positive about the pre-adoption training they had received, there was a view that the legal process had not always been covered. As one mother observed:

*Preparation groups focus on the process up to placement and then the steps beyond that are more opaque.*

However, other adopters did report having received information about the legal process during their preparation to be approved as an adoptive parent, including one mother who reported having enjoyed all her training, *'apart from the boring bit about the law'*. It is possible that information about the court process, given in anticipation of linking and matching may not be prioritised or absorbed by adopters amidst the excitement, and that a more sustainable resource that can be referred to when needed would be more effective.

### **Court fees**

One adoption-related cost that attracted much unprompted comment from parents was the court fee needed to secure the adoption order. There was inconsistency between the placing authorities in their protocols for meeting this cost. For some parents, the court fee had been paid by the local authority, in the absence of any discussion. Others described the confusion evident amongst social workers about how the cost should be met. For example, one mother said:

*They had a big discussion then about who was paying the court fees. So this had never been discussed with us. So they started having this conversation with us in the room... who was going to pay for it, or whether it would be them at all or if it would be us. [Social worker] said 'oh, oh well things have changed', and we're thinking you're always saying this ... we had to wait a couple of weeks then I think [social worker] just emailed a very straight to the point email that basically said 'yeah you're paying, so please send a cheque to me ASAP'.*

Another mother reported feeling anxious by the suggestion that a distant relative of the child might make a late application to court. Although this did not eventuate, the social worker told her that given the uncertainty associated with the case, the local authority would pay her court fee, as a gesture of goodwill. This appeared to be a completely *ad hoc* decision.

There were other parents who had been told unequivocally that they must pay the fees. Although ongoing controversy about the Government imposing high court fees throughout the justice system (Hyde, 2015), the fee for an adoption application is relatively modest, at £170, compared to the £455 payable by the local authority when applying for a placement order. It was not so much the amount of the fee that was commented on, but the way in which this step in the process was presented. Parents who were asked to pay and who could afford this expenditure, usually obliged. It was seen by parents as a way of helping to prevent any hold up with the court procedure. However for other adopters, where money was particularly tight, the expectation by the LA for them to pay for the court fees was a bone of contention and a source of considerable stress. A single mother explained:

*I had said 'look you can't just expect me to fund this ... I'm on statutory adoption pay, I'm just about to go down to unpaid, and you're expecting me to pay the court fees. I'm having to make decisions about what I pay for, I have child benefit and statutory adoption pay, it's not a lot of money ... this has been months in negotiation with my social worker, in getting them [placing LA] to pay the court fees, and now they have said 'We'll pay half.'*

Whether or not the payment created an extra financial burden on adopters, it can be seen from these responses that they would have appreciated fuller and better-timed information about the payment.

### **Attending court**

Traditionally, the formal hearing where the order is granted has been seen by judges and practitioners as a special occasion for the family, especially as it has been expected that the child be present. Under Family Procedure Rules 2014 r 14(16), the applicant and the child are required to attend, unless they are excused by the judge.

When the adoption application is received by the court, notice is served on the parent or parents who still hold parental responsibility (Family Procedure Rules 2014 Practice Direction 14A). The birth parents may apply for leave to object to the adoption order going ahead, in other words, to contest the adoption (s 47(5) ACA 2002). If this contest fails, and the order is made, birth parents are advised of the strict time limit for lodging any application for permission to appeal. It is common for adopters to be anonymised in the court papers served on the parents (rule 14(2)). Over the past three years, the much higher chance of a birth parent appealing has led to a change in practice, with the parents and child usually being excused from attending under rule 14(6), but invited to a celebration hearing later, once the time limit for applying for leave to appeal has expired. This was the case with nearly all families in the study. Most parents therefore had little interaction with any forensic examination by the courts.

One adopter, who was required to attend the hearing of the order, did not get the assistance she requested.

*The court process was discriminating against single parents. The form allowed for a parent of a couple not to attend in order to care for the children, but did not allow for a single parent to prioritise the children's care. I had to appeal and make a special case. This was upsetting for me, and I had to offer to withdraw my application until such time as I could either leave my children for two days or bring them with me on the long journey. There was no financial support offered to do this, or support.*

### Celebration hearings

The majority of adopters who commented on the celebration hearing, described it a positive experience. Many were pleased to have had the opportunity to mark the occasion with a special event:

*The celebration of the adoption order, held at our local court, was wonderful - the magistrates had taken time and gone to considerable trouble to make it a formal, yet welcoming and*

*warm experience. It felt like a rite of passage, in the best sense.*

*Our celebration hearing ... was a really lovely, emotional, celebratory experience. Judge and court staff were brilliant - made us feel welcome, special and made sure our little boy was really involved, even though he was only just two years old.*

For some children, the hearing was thought by parents to have provided an important opportunity to reinforce the permanence of adoptive family life. Others saw it as an essential component of children's ongoing life story work. Even for those children considered too young to understand the significance of the event, some parents thought that the memories it created, together with photographs taken on the day, might, in time, be used to help children develop a coherent narrative of who they are, and how they came to be adopted.

In some cases, social workers had only been allowed time to attend the hearing of the order, and not the celebration, which could be disappointing for them and/or the parents.

However, there was some reported variation in the way hearings were conducted. Not all experiences were as positive for families as parents had hoped. A few described feeling disappointed by the lack of 'occasion' afforded to the day, observing that it had been a big build up to an event that lasted just a few minutes:

*[There was] no sense of occasion in court for the celebration hearing. The judge walked in and said 'I just need to give you this certificate, take a picture sitting in my chair if you want to.' Out of court within five minutes. My daughter very disappointed as she was expecting a special day.*

For one family, the celebration hearing was marred by other activity in court:

*I felt that being in a court environment felt quite unnatural. There were cases on our celebration day that were unpleasant and it made us feel awkward being in the court.*

Several parents said they had not been able to attend the celebration hearing because they lived too far away from the court. Occasionally, adopters had chosen not to participate in the hearing, believing that attendance would have emphasised the differences of their family and child, at a time when their priority was on 'normalising' family life. The imagined formality of the hearing also influenced a decision to avoid participation:

*We are like, really, you want us to take a child to see a judge in a wig and a black cape and for them to associate that coming to live here, I don't think so! Maybe if they are two that's OK, if they are six they are just going to think this is weird and it's just another authority figure ... why on earth would I take my child out of school. 'Is it alright if I take my child out of school for the morning, so that they can go and spend the morning with a judge, who is just going to reiterate the fact that they're different from the other kids?' ... I don't think that's appropriate.*

*It's exactly that - a legal process. Any attempts to try and make it a party or celebration are not necessary. It is not 'normal' when things are just starting to become a 'normal' family.*

Although the court rules, with their message that the child is to 'meet' the judge may appear anachronistic, most of the accounts from the adoptive families suggest that the opportunity to attend court (even for an appointment that has no legal function) is a valuable one. In the current climate of court closures and pressure on the judiciary, it is hoped that this custom will continue.

### **Adopters' evaluation of the information received about the legal process**

Asked in the second questionnaire whether they felt that they had been fully informed about the court process, 22% of those who answered this question (n=67) said they had not.

Forty two adopters answered a question as to how the experience of the court and/or legal process for adoptive families could be improved. These suggestions included: a leaflet explaining legal terms; a step-by-step guide to the adoption order process; help from agencies when there were

cross England-Wales issues, rather than leaving all this to the adopter to work out for herself; a written flowchart document that details the process more clearly, instead of many letters; and local authorities not restricting social workers' attendance at celebration hearings for time and travel reasons.

An adopter who had not been able to find out for a week after the hearing what the outcome was suggested that a designated person have responsibility for finding this out and informing adopters.

Some adopters felt unsupported through extended periods, for example, one whose social worker was off sick and not replaced, so the adopters felt that they had to research the whole legal application without any help. They also felt that the process took too long during what was a stressful time.

One response was that the applicant felt that more protection from birth parents was needed, indicating a lack of confidence in the court process. As noted above, some adopters thought it was unfair for everyone concerned that the birth parents' hopes of contesting had been raised when they were bound to fail. A different response was, however, that the birth family should be allowed to participate in the court hearings, if they choose.

The majority of adopters did not feel that important information about their children had been withheld from them by agencies, who had tried to inform and prepare them as fully as they could about the children's background and what to expect as they settled in. This good practice was not, however, as evident in helping adopters understand how the legal requirements fitted in and would be met.



## Other legal issues for adopters

Some adopters experienced problems regarding the legal status of their relationship with the child, other than relating to the court application.

### Looked-after status

While a child is placed for adoption, but before the adoption order is made, parental responsibility is shared between the birth parents, the local authority and the adopters, although the local authority has priority in exercising this. The child is still 'looked after', which created problems for some adopters. This is another aspect where a clearly written guide, that adopters can easily refer to, might be more effective than expecting them to retain an explanation from the initial training. For example, adopters had received varying advice about getting passports if they were planning a holiday.

### Where the child's name had changed

It was not uncommon for adopters to have been advised by social workers to choose a new first name for the child because their birth name was very distinctive. Even where, for example, one couple wanted to keep the name as a second name, they were advised not to.

This could lead to two problems. Firstly, a small number of adopters referred to the way that staff in the health services insisted on using the child's birth name if this had not yet been altered on NHS records. Secondly, letterbox contact was awkward when the adopters had to write to the birth family using the old name. Parents said that this might get increasingly difficult as the child got older.

### Post-adoption support plans

We discuss the support needs of adoptive families elsewhere [Meakings et al, forthcoming]. Here, it is relevant to note that a pillar of the 2002 Act (in sections 2-8) was its establishing adopters' entitlement to be assessed for support services and agencies' powers to provide these. Lawyers

acting in care and placement proceedings may have scrutinised the adoption plan for evidence that identified needs will be met. However, provision of support services in Wales has been sporadic (Ottaway et al 2014) and improvement is now in the remit of the National Adoption Service.

A number of adopters who live in England were aware of different policies in England and Wales. One adopter complained that it had been very difficult negotiating financial support from the Welsh local authority, to the extent that when some support was agreed, she was asked to sign what she termed an 'illegal' waiver of any claim for future support. This appeared disproportionate to her in the context of the challenges of the placement. Another commented that children of school age placed by English local authorities are entitled to a 'pupil premium' which can secure necessary psychological or other support, which they were struggling to access. However, more recently, the government in England announced that funding of adoption support is to be restricted because of 'unprecedented demand' (Stevenson 2016). Policies in both countries seem therefore likely to continue to fluctuate.

It was not just financial allowances and therapy needs where inconsistencies arose. Helping a child with their identity (Neil et al 2015) through life story work and post-adoption contact are often aspects of the care plan, when lawyers were still involved, that were negotiated and expected to continue in the longer term. This is discussed below.

### **After the adoption order**

Once the court order has been obtained, and the time limit on possible appeal has passed, judicial overview of the adoption is at an end, unless it is one of the exceptional cases where leave is granted out of time.

Lawyers and social workers (especially social workers in Cafcass) will in most cases have been involved in negotiating and brokering care plans that look beyond the care order to how being an adopted person will affect the

child's wellbeing and any future contact arrangements. The legislation specifically provides that, when applying for and making a placement or adoption order, the adoption agency and the court will have regard to the effect on the child, throughout their lifetime, of becoming an adopted person (s 1(4)(c)). They will also consider whether contact arrangements should be made and obtain the views of the parties on this (s 46(6)). Lawyers acting for birth parents and for children (along with the Cafcass guardian) in family proceedings can invest a great deal of time and professional commitment into negotiating a care plan (Pearce et al 2011). After the placement order is made, however, these professionals no longer have a role in proceedings and will not know the extent to which a child's identified support needs, including around identity and contact, are being met (Meakings et al). The responses by adopters to questions about their child's birth family, at this early stage, may reassure professionals to some extent. Adopters in this sample subscribed to openness in adoption, in the sense of promotion of dual connection and (in most cases) empathy with the birth family (Jones 2016). However, at this early stage, contact arrangements had been prescribed for them, with most adopters feeling guided by what they had been told by agencies would be in the child's welfare. Some adopters who had a commitment to helping their child understand the background to their adopted status and promoting contact, were struggling to maintain this in the face of a lack of response from the agency.

#### [Adopters' attitudes to birth parents](#)

It was notable that adopters tended to express sympathy, rather than blame or hostility, toward their child's birth parents. They reflected on the birth parents being disadvantaged and having had poor childhoods. The case file (CARA) review revealed that as many as 63% (n=235) of birth mothers were known to have been involved with social services as a child and more than a quarter (26%, n=96) of all birth mothers were care leavers. One adoptive parent reflecting on her daughter's birth parents observed:

*Well it's quite a dysfunctional [birth] family with a lot of violence and drug and alcohol abuse, lots of that stuff ... when you live in that environment and it's part of a generational thing, then it's normal ... ultimately these parents are still responsible for what they do to their children and the neglect, but actually they don't have a chance and that's the awful thing.*

Even adopters facing legal challenges could remain sympathetic to birth parents. One adopter said she had hoped that the birth mother would contest, so that she could, in time, reassure her son that he was very much wanted by his mother, who had fought to keep him.

Letterbox contact with birth parents had been agreed in all but one of the families who responded to the first questionnaire [95/96]. This is discussed below.

There was a small number of cases where adopters had been advised of serious concerns about keeping their children safe from birth parents. For example, at the stage of the first questionnaire, one adopter had to ask for police help, and was thinking of moving to a new locality.

### [Life story work](#)

A range of views was expressed about the provision and quality of the life story work with the children (Meakings et al, 2016). Nearly a third (30%) of adopters parenting children over the age of four at placement, believed that their child was confused about the reasons for their adoption:

*Our son thought his foster carers were his parents, we have had to carefully explain this to him*

Life story work helps adopted children understand their history and status and engaging with a life story book helps them achieve a sense of permanence (Watson, Latter and Bellew 2015). Although some parents said they were satisfied, many had not received a life story book by the time of the second questionnaire or did not think it was helpful. Inconsistency in practice in Wales has been highlighted in a recent enquiry by the National Assembly and is being addressed by the National Adoption Service (NAW 2016)

Occasionally, an adopter would express disquiet about how appropriate it was to remind the child of some information from their past. For example, one adopter of two siblings who had witnessed domestic violence was dubious about showing them photographs of the people who had traumatised them. She observed that 'you would not do that with an adult'.

### Contact with birth parents

There were no plans for face-to-face contact with any birth parent. Letterbox contact with birth parents had been agreed in all but one family participating in the study. The interviews took place around the time that the first letter box contact was due with birth parents, and this was a matter at the forefront of adopters' minds. They were thinking about what to include and exclude in their communication, how to address birth parents, how to sign off, and what to do if the child's name has changed. Some were processing conflicting advice – they had wanted and had received guidance from the local authority about the style and content of the letters. However, this support had not been universally available and there were instances of adopters fretting over how to write an appropriate letter. Several adopters were already wondering how they would deal with contact in the future. Various concerns were identified, including the involvement of their child in letter writing: how many times would adopters involve their child in correspondence if the contact was never reciprocated? Occasionally parents spoke about the difficult emotions that contact with the birth family evoked. One adoptive mother said:

*My husband didn't want to do it at all, he just said, 'I don't think they deserve it.' I said to him. 'It's not about them or us, it's about [child's name] and when she's old enough to understand and we go through it all with her, we've got to say 'look we tried, and every year we wrote a letter and we said how you were doing that year', and whether or not they choose to respond then, at least we can show that we participated in our end of the bargain, and that's what it's about, it's for her, because I don't want her ever to say to us 'well why didn't you do this?'*

Unexpected and unplanned communication from birth parents (forwarded by the LA) in the few months post placement had unsettled several adoptive families. These adopters had been told that until the adoption order had been made, the LA was obliged to forward correspondence. Whilst parents did not refute this, they did say that a more sensitive and supportive approach to forwarding the correspondence would have helped. One mother recalled suddenly being handed a letter from birth father at a review meeting, in which he wrote that he hoped the child would come and find him. Another mother described how a card to the child arrived unexpectedly in the post from birth father and his new partner.

These examples indicate some flaws in managing ongoing contact effectively for all parties within the legal framework, and suggest that specific training for social workers on transitional planning might be helpful.

### Contact with siblings

More than a quarter of the 81 children with siblings living elsewhere, (28%, n=23) had a plan for face-to-face contact with at least one brother or sister, but only three visits had taken place by the time of the nine-month interview. In these instances, according to adopters, there had been very little social work oversight or support for families. Most parents reported being committed to maintaining meaningful contact with siblings living elsewhere. Some were frustrated by what they saw as a lack of priority by social workers in facilitating the contact.

### Conclusion

This article has drawn on data from the Wales Adoption Study to explore issues relating to the adopters' applications to court and the associated administrative processes. The findings suggest that although some applications were contested, most adopters did not face complex problems that would necessarily require legal representation. However, many did experience problems which did not involve points of law or unpredictable behaviour by birth parents. Delays and anxieties arose largely from what adopters reported as poor social work practice, including avoidable

administrative errors, a lack of communication, scanty preparation in filing paperwork for court and (occasionally) not knowing the case. To a lesser extent, there was some evidence of disorganised court staff and, again, poor communication. According to the families in our study, these experiences, at times, contributed to the stresses that applicants were under in settling in together as a newly formed adoptive family. There were also implications for coping with future challenges about contact and identity.

Parents reported on aspects of the process where communication between the agencies, courts and adopters had not worked. Adopters could become concerned when there were unexplained gaps or delays in their understanding; even though matters might have been progressing normally, they were not receiving the assurances they needed. In several instances, however, there had been mistakes and delays that were outside the adopters' control, and could lead to frustration and even distrust. Adopters recognised and respected the seriousness of the outcome for the child and the birth parents, as well as themselves, and that legal safeguards to protect all parties' interests had to be in place. At this stage of formal legal proceedings, they were reliant for professional advice on their social workers, some of whom appeared to have been overworked or out of touch with the demands of the family court system, which is also under extreme pressure.

Most families in this study were doing well, and where they did encounter obstacles with courts and related processes, there is no indication that this had a negative impact on their relationships with their child. Nevertheless, the rate of avoidable errors, delays, misunderstandings and poor communication is troubling. This contributed to adopters' sense of needing to be better informed, in a timely manner, about what to expect when going to court, when, and from whom.



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